521, the Supreme Court of Kansas refused to enforce a liability incurred in New Mexico, under a statute providing that in case any person should be killed through the negligence of a railroad official in the management of a train, the corporation should forfeit and pay five thousand dollars, which could be recovered by the husband or wife or minor children of the deceased. The court went largely on the ground that the statute was penal in its nature. Inasmuch as the sum recoverable was absolutely fixed, and in no way proportional to the injury received, it does look, perhaps, as if the legislature intended to inflict a penalty on the corporation rather than recompense the family of the deceased. The decision therefore seems right. In earlier days it was generally held that, even where the sum recoverable was not fixed, but was dependent upon the extent of the injury, the statute was penal in character; but in more recent times the trend of decisions has been, rightly enough it would seem, in the direction of holding statutes of that sort merely compensatory. Where such is the nature of the statute, rights acquired under it should certainly be enforced in any court having jurisdiction of the parties and the subject matter, exactly as though acquired through a common law tort. *Dennick* v. *R. R. Co.*, 103 U. S. 11.

In *Huntington* v. *Attrill*, [1893] A. C. 150, 155, Lord Watson declared that it was for the court called upon to give recognition to a right created by a foreign statute to determine the substance of the right, and whether or not its enforcement would involve the execution of a penal law. The Massachusetts court has recently handed down a decision at variance with this opinion. In *Coffing* v. *Dodge*, 45 N. E. Rep. 928, it was decided that the liability imposed on the stockholders of a corporation by a statute of another State would not be enforced in Massachusetts, unless the liability was held contractural by the courts of that State. This decision has been sharply criticised, but when interpreted properly seems correct. Of course the Massachusetts court must frame its own definition of penal statutes, and not rest content with the appellation bestowed on the statute by the foreign court. But the construction of a statute of another State is admittedly to be settled by the courts of that State; and, taken in a broad sense, this includes the determination of the substantial nature of the obligation intended to be created. The question for the Massachusetts court in *Coffing* v. *Dodge* was not whether the foreign court called the statute penal or contractual, but whether it regarded the statute as giving rise to an obligation of such a nature that it fell within the Massachusetts definition of penal laws.

THE AVAL THEORY OF ANOMALOUS INDORSEMENT. — Few problems in the law of commercial paper appear to have occasioned the courts greater perplexity than that of determining the liability of one who writes his name on the back of a bill or note to give it credit with the payee. A recent Ohio case, *Ewan* v. *Brooks-Waterfield Co.*, 45 N. E. Rep. 1094, deciding that this anomalous indorser is presumptively liable as a surety of the maker, represents but one of several conflicting views that obtain in the United States. See 1 Ames's Cases on Bills and Notes, 219–272; 1 Daniel on Negotiable Instruments, §§ 707–716.

While there is much to be said in favor of the view, adopted in New York and a few other States, which allows the payee to charge the anomalous signer as a regular indorser, it is submitted, nevertheless, that such a signer should more properly be regarded, not as a legal holder, but as

merely a surety of that party to the instrument who has been benefited by the anomalous indorsement, and as assuming, in the capacity of such surety, exactly the same legal responsibility as that of the principal. Such an obligation is known to the French law as an *aval*. Apparently there is no English or American decision in which this French conception has been fully recognized as a *ratio decidendi*, but in *Steele* v. *McKinlay*, 5 Appeal Cases, 754, Mr. Justice Blackburn discusses the doctrine and gives it the authority of his approval. After referring to the principles of regular endorsement, he says: "But I quite agree that, by the custom of merchants as modified by English law, there may also be an indorsement by a person, not a holder of the bill, who puts his name on the bill to facilitate the transfer to a holder. By the old foreign law, not in this respect entirely adopted by the English law, this might be done by what was called an *aval*; . . . and if such an *aval* was given by any one, his obligation to all subsequent holders of the bill was precisely the same as that of the person to facilitate whose transfer the *aval* was given. It appears from Pothier . . . that the *aval* might be made by one who gave his name, either by way of incurring responsibility for the drawer, placing the signature under the name of the drawer, or for the indorser, placing it under the indorsement, or for the acceptor, placing it under that of the acceptance." While, however, this last statement may represent the normal case, the fact that the name of *le donneur d'aval* appears on the back of the instrument, and not directly below that, for instance, of the maker, should make no difference, and in Canada, where the courts have accepted the *aval* theory, this is the law. See *Latour* v. *Gauthier*, 2 Lower Canada Law Jour. 109 (Quebec); *Merritt* v. *Lynch*, 9 Lower Canada Rep. 353 (Montreal).

The *aval* idea seems to have been generally adopted on the Continent; and, while the same result has been partially reached by the English Bills of Exchange Act and by statutes in a few States, as well as by some court decisions, it is believed that effect would be more nearly given to the real intention of the parties, and that more perfect justice would be thereby secured, were this doctrine fully incorporated into our law of negotiable paper.

Locality of Crime. — The Court of Appeals of Kentucky, in the recent case of *Jackson* v. *Commonwealth*, 38 S. W. Rep. 1091, has had to deal with the question of the criminal intent and the locality of crime in a difficult form. In Ohio, the defendants administered cocaine to a young woman, intending serious bodily harm. They brought the apparently lifeless body into Kentucky, and, in order to conceal the crime, cut off the head, believing that she was already dead. But the evidence shows that, until the decapitation, she was alive; and the question is raised whether the crime of murder was committed within the jurisdiction of Kentucky.

The prisoners were convicted; and in sustaining the conviction the court is right, although the reasoning is not entirely satisfactory. The fact that the poison was administered in Ohio offers little difficulty. The girl did not die of the poison; she died from the act of violence which took place in Kentucky. Apart from this, two difficulties are to be met before we reach the same conclusion as the court. The act causing death in Kentucky is present; but to constitute the crime of murder, there must be also the general criminal intent and the malice aforethought. If we can find the crime of homicide, we have the requisite